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**COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: ACCOUNT OF RUTH ELAINE KING
DOCKET NO. 2018-02
CLAIM OF RUTH ELAINE KING

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has carefully and independently reviewed the entire record of this proceeding, including the proposed Opinion and Recommendation of the Hearing Examiner. We note that neither party filed Exceptions to the proposed Opinion and Recommendation. The Board finds appropriate the History, Findings of Fact, Conclusions of Law, Discussion, and Recommendation with the following modifications:

1. The citation to Finding of Fact 6 is amended to read: "24 Pa.C.S. §§ 8102 and 8304(a), (b)(3); PSERS-1; PSERS-2; PSERS-7; PSERS-14; PSERS-26; N.T. 120."
2. The citation to Finding of Fact 13 is amended to read: "PSERS-22; PSERS-23; PSERS-24; N.T. 129-131."
3. In Conclusion of Law 4, the word "application" is changed to "applications."
4. The citation on page 16 to "See, 24 Pa.C.S.A. §8103" is deleted and replaced with "*See, e.g., Forman*, 778 A.2d at 780."

With the above modifications, we hereby adopt the Hearing Examiner's Opinion and Recommendation as our own and, accordingly:

IT IS HEREBY ORDERED that Claimant's request to purchase credit for the out-of-state service she rendered in New Jersey during the 1977-1978 through 1980-1981 school years is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: August 9, 2019

By: Melva S. Vogler
Melva S. Vogler, Chairman



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE
OFFICE OF HEARING EXAMINERS
2601 NORTH 3rd STREET
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PSERB
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Marc A. Moyer, Hearing Officer

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June 7, 2019

Ruth King


Cayla B. Jakubowitz, Esquire
Public School Employees'
Retirement System
5 North Fifth Street
Harrisburg, PA 17101

Re: *Account of Ruth Elaine King / Claim of Ruth Elaine King*
(Docket No. 2018-02)

Dear Ms. King/ Ms. Jakubowitz:

Enclosed is a copy of my Opinion and Recommendation in the above-referenced matter. The Opinion and Recommendation will be submitted to the Public School Employees' Retirement Board (the "Board") for its consideration.

Pursuant to 1 Pa. Code §§35.211 – 35.214, any party who wishes to appeal all or part of the Opinion and Recommendation to the Board shall file exceptions in the form of a Brief on Exceptions within 30 days after service of a copy of this Opinion and Recommendation. A "Brief Opposing Exceptions" may be filed in response to a Brief on Exceptions within twenty (20) days of receipt of the Brief on Exceptions.

Exceptions and Briefs on Exceptions should be submitted to the Appeal Docket Clerk / Glen R. Grell, Secretary, Public School Employees' Retirement Board, 5 North Fifth Street, Harrisburg, PA 17101, with a copy being served upon the opposing party.

Failure to file a Brief on Exceptions within the time allowed under the General Rules of Administrative Practice and Procedure at 1 Pa.Code §§35.211 – 35.214 shall constitute a waiver of all objections to the Opinion and Recommendation.

Sincerely,



Marc A. Moyer, Esquire
Hearing Officer

**COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM**

In Re: :
Account of Ruth Elaine King : **Docket No. 2018-02**
Claim of Ruth Elaine King :

OPINION AND RECOMMENDATION

Date of Hearing: January 24, 2019
Hearing Officer: Marc A. Moyer, Esquire
Claimant, *Pro Se*: Ruth Elaine King
For PSERS: Cayla B. Jakubowitz, Esquire

HISTORY

This matter is before the Public School Employees' Retirement Board on an appeal filed by Ruth Elaine King ("Claimant") from a November 6, 2017 decision by the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS") to deny Claimant's request to purchase credit for out-of-state service with the Township of Union Public Schools from September, 1, 1979 through January 30, 1980 and with Newark Public Schools from October 1, 1977 through June 20, 1978, September 1, 1978 through March 20, 1979, and from September 1, 1980 through June 20, 1981. Claimant's last day of work with the Philadelphia School District was June 30, 2014. Claimant submitted Purchase of Out-of-State Service forms with PSERS on or about August 26, 2014 through which she sought the aforementioned service credit.

By letters dated January 18, 2017 and February 22, 2018, PSERS informed Claimant that she must be an active contributing member of PSERS or a multiple service member active with SERS to purchase credit for out-of-state service. For that reason, PSERS advised Claimant that she was not eligible to purchase the service credit because she had terminated her employment with the public school system on June 30, 2014, prior to submitting her Purchase of Out-of-State Service forms. The January 18, 2017 and February 22, 2018 correspondence also advised Claimant of her right to appeal from PSERS' decision to the ESRC.

Claimant timely appealed from PSERS' determination. Thereafter, the ESRC upheld PSERS' decision at its November 6, 2017 meeting. PSERS notified Claimant of the ESRC's decision by letter dated December 13, 2017. By way of explanation, Claimant was informed once again that the Public School Employees' Retirement Code only permits purchases of credit for out-of-state service by active PSERS members. For that reason, Claimant was not eligible to purchase the service requested because

her last day of work was recorded as June 30, 2014, and her Out-of-State Service forms were not received by PSERS until August 26, 2014 when she was no longer an active contributing member.

Claimant appealed from the ESRC's determination. In support of her appeal, Claimant asserted that that PSERS had not sufficiently informed her that she was required to apply for the purchase of service credit prior to her termination of service. PSERS filed an Answer on or about February 1, 2018. The hearing on Claimant's appeal occurred on January 24, 2019 before Hearing Officer Marc A. Moyer, Esquire.

Claimant appeared for the hearing, *pro se*, and testified on her own behalf. Claimant moved fifteen (15) exhibits into evidence. Cayla B. Jakubowitz, Esquire represented PSERS at the hearing. PSERS presented its case through the testimony of PSERS Retirement Representative David Keyser and PSERS Regional Office Administrator, Lisa York. PSERS also moved twenty-six (26) exhibits into evidence.

The evidentiary record in this matter closed with the filing of Notes of Testimony ("N.T.") on February 7, 2019. By Order dated February 8, 2019, Claimant was directed to file her Post-Hearing Brief by March 11, 2019. PSERS was directed to file its Post-Hearing Brief no later than April 10, 2019. Claimant was directed to file her Reply Brief, if any, no later than April 25, 2019. Claimant and PSERS filed Post-Hearing Briefs. Claimant declined to file a reply brief. This matter is now before the Board for final disposition.

FINDINGS OF FACT

1. Claimant was employed by the School District of Philadelphia (the "District") from 1986 through the date of her retirement. (Exhibit C-5; N.T. 52-53).
2. "Date of termination of service" is defined by the Public School Employees' Retirement Code (the "Retirement Code") as the latest of the following dates:

(1) The last day of service for which pickup contributions are made for an active member or for which the contributions otherwise required for service were not made solely by reason of any provision of this part relating to the limitations...

(3) the last day of service for which mandatory pickup participant contributions are made for an active participant.

24 Pa.C.S.A. §8102. (N.T. 79-80, 120).

3. "Effective date of retirement" is defined by the Retirement Code as follows:

The first day following the date of termination of service of a member if he has properly filed an application for an annuity within 90 days of such date or:

(1) In the case of a member who applies for an annuity subsequent to 90 days after termination of service, the date of filing such application or the date specified on the application, whichever is later.

(2) In the case of a vestee who files an application for an annuity within 90 days of his superannuation age, the attainment of such age.

(3) In the case of a vestee who defers the filing of an application for an annuity to a date later than 90 days following attainment of superannuation age, the date of filing or the date specified on the application, whichever is later....

24 Pa.C.S.A. §8102. (N.T. 80, 120).

4. Claimant is not a multiple service member under the Retirement Code. (N.T. 125).
5. An "active member" under the Retirement Code is defined as "a school employee for whom pickup contributions are being made to the fund or for whom such contributions otherwise required for current school service are not being made solely by reason of any provision of this part relating to the limitations..." 24 Pa.C.S.A. §8102. (N.T. 82-83, 125, 128).

6. A member is required to purchase out-of-state service prior to his/her last date of paid service, while he/she is an active contributing member of PSERS. 24 Pa.C.S.A. §8102. (PSERS-1; PSERS-2; PSERS-7; PSERS-14; PSERS-26; N.T. 120).

Pre-Retirement/Termination of Service Information

7. PSERS provided Claimant a Member Handbook upon beginning her employment with the District and pursuant to her PSERS enrollment. (PSERS-25; N.T. 131).

8. The Member Handbook stated that “Any active contributing member of the [PSERS] ...may be eligible to purchase service” (emphasis in original). (PSERS-25, p. 4; N.T. 132).

9. PSERS provided Claimant with an updated Active Member Handbook in June 2007. (PSERS-26; N.T. 133).

10. The updated Active Member Handbook stated that “Active members of PSERS are eligible to apply to purchase service credit”. (PSERS-26, p. 7; N.T. 134).

11. The updated Active Member Handbook stated that “PSERS must receive your purchase of service applications while you are an active contributing member.” (PSERS-26; N.T. 134).

12. PSERS provided Claimant annual Statements of Account for school years 2005-2011 which indicated under the heading “Special Notes”, “All requests to purchase service credit must be filed while you are a qualified contributing member.” (PSERS-16; PSERS-17; PSERS-18; PSERS-19; PSERS-20; PSERS-21; N.T. 126-129).

13. PSERS provided Claimant annual Statements of Account for school years 2011-2014 which indicated under the heading “Special Notes”, “All requests to purchase service credit must be filed while you are a qualified contributing member and within the prescribed time frame.” (PSERS-21; PSERS-22; PSERS-23; PSERS-24; N.T. 126-129).

14. None of the Statements of Account were returned to PSERS for being undeliverable. (N.T. 127).

15. Claimant attended a PSERS Foundations for Your Future program (the "Program") at the District in the Fall 2013 at which Power Point slides were discussed. (Exhibit C-4; PSERS-14; N.T. 16-17, 67-68, 104, 119-120).
16. Claimant retained a printed copy of the Power Point slides on which she wrote notes from the Program. (Exhibit C-4; PSERS-14; N.T. 67-68, 104).
17. When addressing "Purchase of Service", a Power Point presentation slide stated, "Must apply while an active contributing member in a qualifying year". (Exhibit C-4; PSERS-14, p. 8; N.T. 105, 119-120).
18. "Out-of-State public school service" was addressed by the PSERS presenter during the Power Point presentation. (Exhibit C-4; PSERS-14; N.T. 105-106, 119-120).
19. The PSERS presenter explained to Program attendees that applications for out-of-state public school service will not be accepted after a member terminates service. (N.T. 105-106).
20. Claimant received the Guidelines for Completing Your Purchase of Out-of-State Service with the blank Purchase of Out-of-State Service form she received. (PSERS-15; N.T. 59, 123-124).
21. The Guidelines for Completing Your Purchase of Out-of-State Service provides, in part, that only "active contributing members of PSERS or multiple service members who are active members of the State Employees' Retirement System" are eligible for the purchase of out-of-state service. (PSERS-15; 124-125).

Retirement Application/Requests for Purchase of Service Credit

22. Claimant submitted a Request for Retirement Estimate with PSERS on or about March 11, 2014. Claimant identified June 30, 2014 as her tentative date of retirement and wrote "defer until 09/15/14 after 60th birthday" on the Request. (PSERS-1; N.T. 54, 75-76).

23. Claimant submitted a Notification of Retirement/Resignation form with the District on or about March 14, 2014 through which she identified her last day of work as June 30, 2014. (Exhibit C-5).
24. The Request for Retirement Estimate form included the language **“REMINDERS:“Purchase of Service: If applicable, your completed application to purchase credit for service must be received by PSERS prior to your last day of paid service. Please visit the PSERS website or request the “Let’s Talk About Purchasing Credit for Service” pamphlet for more details”...** (PSERS-1; N.T. 54-55, 77).
25. Claimant filed an Application for Retirement form (the “Application”) to PSERS on or about June 23, 2014. (PSERS-2; N.T. 55, 77).
26. The Application identified September 15, 2014 as Claimant’s expected last day of work. (PSERS-2; N.T. 55-56).
27. Claimant’s last day of work with the District was June 30, 2014. (Exhibit C-5; Exhibit C-8; N.T. 52-53, 55-56).
28. Claimant did not request that her date of retirement be delayed in Section 11 of the Application. (PSERS-2; N.T. 79).
29. Claimant filed a “Purchase of Out-Of-State Service” form with PSERS on August 26, 2014 through which she sought to purchase service credit for her employment with the Township of Union Public Schools from September 1, 1979 through January 30, 1980. (PSERS-3; N.T. 80-81).
30. Claimant dated the Township of Union Public Schools Purchase of Out-Of-State Service form June 30, 2014. However, she signed the form on or about July 30, 2014. (PSERS-3; N.T. 60).
31. Sections D (Employer Certification), E (Retirement Information), and F (Retirement System Certification) on the Purchase of Out-Of-State Service form filed with PSERS on August 26, 2014 were not completed. (PSERS-3).

32. Claimant hand-delivered the Purchase of Out-Of-State Service form to the Township of Union Public Schools on or about July 31, 2014. (Exhibit C-12; N.T. 44).
33. Section D of the Purchase of Out-Of-State Service form requires prior employers to certify that the member worked for the employer during the period for which service credit is requested. (PSERS-3; N.T. 83-84).
34. Sections E and F of the Purchase of Out-Of-State Service form requires that the applicable out-of-state- retirement system complete Section E by answering the questions set forth therein related to a claimant's eligibility for benefits with the out-of-state system and/or claimant's refund of benefits to the system. (PSERS-3; N.T. 84).
35. Claimant filed a "Purchase of Out-Of-State Service" form with PSERS on August 26, 2014 through which she sought to purchase service credit for her employment with the Newark Public Schools from October 1, 1977 through June 20, 1978, September 1, 1978 through March 20, 1979, and from September 1, 1980 through June 20, 1981. (PSERS-4; N.T. 84-85).
36. Claimant dated the Newark Public Schools Purchase of Out-Of-State Service form June 30, 2014. However, she signed the form on or about July 30, 2014. (PSERS-4; N.T. 60).
37. Claimant hand-delivered the Purchase of Out-Of-State Service form to Newark Public Schools on or about July 31, 2014. (Exhibit C-13; PSERS-4; N.T. 60).
38. Sections D (Employer Certification), E (Retirement Information), and F (Retirement System Certification) on the Newark Public Schools Purchase of Out-Of-State Service form filed with PSERS on August 26, 2014 were not completed. (PSERS-4; N.T. 85).

Post-Termination Events

39. By letter dated September 23, 2014, PSERS notified Claimant that it could not process her requests to purchase out-of-state service because the Out-Of-State Service forms were incomplete. (PSERS-6; N.T. 61, 87).
40. Claimant attended a retirement exit counseling session with PSERS retirement representative David Keyser ("Mr. Keyser") on September 25, 2014. (PSERS-7; N.T. 62, 88-89).
41. Claimant was provided a Retirement Exit Counseling Checklist at the September 25, 2014 counseling session. (PSERS-7; N.T. 90-92).
42. The Retirement Exit Counseling Checklist provided, in pertinent part, "If applicable, a completed purchase of service application must be received by PSERS prior to the last day of paid service in a qualifying year." (PSERS-7; N.T. 90-92).
43. At the exit counseling session, Mr. Keyser addressed the need by PSERS to receive a completed purchase of service application prior to the last day of paid service in a qualifying year in order for a member to be eligible to purchase out-of-state service credit. (N.T. 90-91).
44. Claimant spoke with Mr. Keyser at the conclusion of the September 25, 2014 retirement exit counseling session. (N.T. 63, 92).
45. Mr. Keyser informed Claimant that she was required to submit an application to purchase out-of-state service prior to her last day of employment, and that she was not eligible to purchase the service credit as of September 25, 2014 if she had already terminated employment. (PSERS-7; N.T. 92).
46. PSERS sent Claimant correspondence dated October 8, 2014 entitled "Finalized Retirement Benefit" which, in part, memorialized Claimant's termination date as June 30, 2014 and her retirement date as July 1, 2014. (PSERS-8; N.T. 64, 94, 95).

47. Claimant did not file an Intent to Change the Terms of the Retirement Plan with PSERS which was included with PSERS' October 8, 2014 correspondence through which Claimant would have had an opportunity to rescind her retirement Application and/or change the effective date of her retirement. (PSERS-8; N.T. 64, 96).
48. At no time did Claimant contact PSERS to indicate that her retirement date or her date of termination reflected on the October 8, 2014 correspondence were incorrect. (N.T. 96).
49. On January 12, 2017, PSERS received a Purchase of Out-of-State Service form for service Claimant provided at the Newark Public Schools which contained the information missing at Sections D, E, and F of the form Claimant filed with PSERS on August 26, 2014. (PSERS-9; N.T. 65, 97).
50. PSERS did not process the Purchase of Out-of-State Service form it received on January 12, 2017 because it was untimely. (N.T. 98).
51. By letter dated January 18, 2017, PSERS informed Claimant that she did not meet the eligibility requirements to purchase out-of-state service credit because she terminated employment with the public school system prior to having submitted her service purchase request. (PSERS 10; N.T. 65-66, 98-99).
52. Claimant appealed from PSERS' determination to the ESRC. (N.T. 66, 99).
53. The ESRC denied Claimant's appeal on November 6, 2017, and informed Claimant of its decision by letter dated December 13, 2017. By way of explanation, PSERS informed Claimant that the Retirement Code permits purchases of credit for out-of-state service only by active PSERS members. For that reason, Claimant was not eligible to purchase the service requested because her last day of work was recorded as June 30, 2014, and her Out-of-State Service forms were not received by PSERS until August 26, 2014 when she was no longer an active contributing member. (PSERS 13; N.T. 72, 103).
54. On January 26, 2018, PSERS received a Purchase of Out-of-State Service form for service Claimant provided at the Township of Union Public Schools which contained the information missing at

Sections D, E, and F of the form Claimant filed with PSERS on August 26, 2014. (PSERS-11; N.T. 65, 99-100).

55. PSERS did not process the Purchase of Out-of-State Service form it received on January 12, 2017 because it was untimely. (N.T. 100).

56. By letter dated February 22, 2018, PSERS once again informed Claimant that she did not meet the eligibility requirements to purchase out-of-state service credit because she terminated employment with the public school system prior to having submitted her service purchase request. (PSERS 12; N.T. 100-101).

57. Claimant filed an appeal from the ESRC's determination on or about January 12, 2018, through which she requested an administrative hearing. (Official Notice-agency records).¹

58. PSERS filed its Answer to Claimant's Appeal on February 1, 2018. (Official Notice-agency records).

59. Claimant was served with all pleadings, orders and notices filed of record in this matter, and she participated at the January 24, 2019 hearing, *pro se*, through which she was provided the opportunity to testify, examine witnesses, and offer evidence. (N.T. 5-140).

¹ Official notice of such matters as might be judicially noticed by courts is permissible under the General Rules of Administrative Practice and Procedure, 1 Pa.Code §35.173, which provides, in pertinent part, as follows:

§35.173. Official notice of facts.

Official notice may be taken by the agency head or the presiding officer of such matters as might be judicially noticed by the courts of this Commonwealth, or any matters as to which the agency by reason of its functions is an expert. . . .

¹ Pa.Code §35.173. See, also, *Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A.2d 991, 994 n. 6 (Pa. Cmwlth. 1987).

CONCLUSIONS OF LAW

1. The rights of PSERS members are derived solely from the provisions of the Public School Employees' Retirement Code ("Retirement Code"). 24 Pa.C.S.A. §8101 *et. seq.*; *Forman v. Public School Employes' Retirement Board*, 778 A.2d 778, 780 (Pa. Cmwlt. 2001).
2. The authority of the Board to grant or deny Claimant's request is limited to the provisions of the Retirement Code, and the Board has no authority to grant Claimant rights beyond those specifically set forth in the Retirement Code. *Forman, supra*; *Burriss v. State Employes' Retirement Board*, 745 A.2d 704, 706 (Pa. Cmwlt. 2000); *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403, 405 (Pa. Cmwlt. 1992).
3. Claimant's date of termination from the School District of Philadelphia was June 30, 2014. (Finding of Fact, Nos. 1, 23, 27).
4. Claimant has failed in her burden of showing that she was an active participating member of PSERS at the time she submitted her application to purchase out-of-state service credit. (Finding of Fact, Nos. 1, 5-6, 23, 25, 27, 29, 31-32, 35, 37-38, 48-49, 54).
5. Claimant has failed in her burden of showing that she is entitled to purchase out-of-state service credit with PSERS for work she performed at Township of Union Public Schools and the Newark Public Schools by having submitted her service purchase requests prior to the date of her termination of service. (Findings of Fact, Nos. 1, 5-6, 23, 25, 27, 29, 31-32, 35, 37-38, 48-49, 54; 24 Pa.C.S.A. §§8102, 8304; 1 Pa.Code §31.11).
6. Claimant has been afforded reasonable notice of the grounds upon which PSERS denied her requests to purchase out-of-state service credit, and she has been provided an adequate opportunity to be heard in this proceeding. (Finding of Fact, Nos. 57-59).

DISCUSSION

This matter involves an appeal from a November 6, 2017 decision by the PSERS' Executive Staff Review Committee to deny Claimant's request to purchase out-of-state service credit for her service with the Township of Union Public Schools from September, 1, 1979 through January 30, 1980 and with Newark Public Schools from October 1, 1977 through June 20, 1978, September 1, 1978 through March 20, 1979, and from September 1, 1980 through June 20, 1981. By letter dated December 13, 2017, PSERS informed Claimant that it had denied her request on the following grounds:

The Public School Employees' Retirement Code permits purchases of credit for out-of-state service only by active PSERS members. Your last day of work and termination date is recorded as June 30, 2014. Your Purchase of Out-of-State Service forms were not received until August 26, 2014. Because you were no longer an active contributing member when your forms were received, you are ineligible to purchase this service....

Claimant seemingly acknowledges that the Retirement Code's statutory scheme required her to apply for out-of-state service credit prior to date of termination from active service but argues that she should be permitted to receive the service credit she seeks on equitable grounds based upon "PSERS [having] failed to comprehensively educate [her] in her active retirement process and [by having] failed to provide support in matters pertaining to her retirement." Claimant additionally asserts that she should be considered to have timely submitted Purchase of Out-of-State Service forms for the service credit notwithstanding the absence of information on the forms from her former employers.

As the party appealing from the determination of the PSERS' Executive Review Committee, Claimant bears the burden of establishing that she is entitled to the service credit she seeks under Pennsylvania's Public School Employees' Retirement Code, 24 Pa.C.S.A. §8101 *et. seq.*; *Gierschick v. State Employees' Retirement Board*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *Wingert v. State Employees' Retirement Board*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991). The degree of proof required by Claimant to establish her case is a preponderance of the evidence. *Suber v. Pennsylvania Commission on Crime and Delinquency, Deputy Sheriff's Education and Training Board*, 885 A.2d 678, 681-83 (Pa. Cmwlth.

2005); *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *app. den.*, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is “such proof as leads the fact-finder. . . to find that the existence of a contested fact is more probable than its nonexistence” through evidence which is substantial and legally credible. *A.B. v. Slippery Rock Area School District*, 906 A.2d 674 (Pa. Cmwlth. 2006); *Lansberry*, 578 A.2d at 601-602; *Sigafoos v. Pennsylvania Board of Probation and Parole*, 503 A. 2d 1076, 1079 (Pa. Cmwlth. 1986).

Statutory/Regulatory Framework

It is well established that a retiree’s right to benefits under the Retirement Code is strictly limited to those specifically set forth by the Code. *See, Forman v. Public School Employees’ Retirement Board*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001); *Burriss v. State Employees’ Retirement Board*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees’ Retirement Board*, 622 A.2d 403, 405 (Pa. Cmwlth. 1992). Moreover, PSERS is required to construe its enabling statute according to its plain meaning and in such a manner as to give effect to all of its provisions. 1 Pa.C.S.A. §1921(a), (b).

Claimant’s ability to receive out-of-state service credit is addressed by the Retirement Code at 24 Pa.C.S.A. §8304 which provides, in pertinent part, as follows:

(a) Eligibility.--An active member or a multiple service member who is an active member of the State Employees' Retirement System shall be eligible to receive Class T-C, Class T-E, Class T-F, Class T-G or Class T-H service credit for creditable nonschool service... as set forth in subsection (b) provided that he is not entitled to receive, eligible to receive now or in the future, or is receiving retirement benefits for such service under a retirement system administered and wholly or partially paid for by any other governmental agency or by any private employer, or a retirement program approved by the employer in accordance with section 8301(a)(1) (relating to mandatory and optional membership), and further provided that such service is certified by the previous employer and the manner of payment of the amount due is agreed upon by the member, the employer, and the board.

(b) Limitations on nonschool service.--Creditable nonschool service credit shall be limited to:

(3) Service in any public school or public educational institution in any state other than this Commonwealth...

24 Pa.C.S.A. §8304 (emphasis added). Stated otherwise, a PSERS member must be an “active member” to be eligible for out-of-state service credit.

The Retirement Code defines an “active member” as “a school employee for whom pickup contributions are being made to the fund...” 24 Pa.C.S.A. §8102. “Creditable nonschool service” is defined by the Retirement Code as “service other than service as a school employee for which an active member may obtain credit in the system. 24 Pa.C.S.A. §8102. Because pickup contributions are not made to the fund on behalf of non-active members, they are no longer eligible to purchase out-of-state service after an active member terminates school service. See, 24 Pa.C.S.A. §8102 (definition of “date of termination of service” as “the last day of service for which pickup contributions are made for an active member” or “the last day of service for which mandatory pickup participant contributions are made for an active participant”). See also, *In re: Account of Joan A. Jordan*, Docket No. 2012-08 (PSERB January 29, 2013); *In re: Account of Evangeline A. Ronstadt*, Docket No. 2011-16 PSERB May 1, 2013). By definition, a member’s effective date of retirement is not necessarily synonymous with a member’s date of termination of service under the Retirement Code.

Analysis

In this case, the record unequivocally shows that Claimant’s last day of employment with the School District of Philadelphia was June 30, 2014. Accordingly, Claimant was no longer an “active member” of PSERS after that date regardless of Claimant’s effective date of retirement. See, 24 Pa.C.S.A. §8102 (definition of “effective date of retirement”). The record also shows that the earliest date Claimant can be considered to have applied for out-of-state service credit was August 26, 2014, the date upon which she filed her Purchase of Out-of-State Service forms with PSERS. Because Claimant’s

requests were filed with PSERS after her effective date of termination, during which she was no longer an active member of PSERS, she was not eligible for out-of-state service credit under the Retirement Code.

Claimant's assertion that she satisfied the requirements of the Retirement Code when she submitted incomplete Purchase of Out-of-State Service forms to PSERS on August 26, 2014 is unavailing. Claimant argues that because she completed the portions of the forms for which she was responsible to provide information, and because Sections D, E and F of the forms required information from third parties, she should be considered to have "applied" for out-of-state service credit upon her submission of the forms. Assuming, *arguendo*, Claimant could be considered to have submitted sufficiently completed Purchase of Out-of-State Service forms to PSERS on August 26, 2014 without information from her former employers, the record nevertheless establishes that she submitted the forms to PSERS after her last date of employment on June 30, 2014, when she was no longer an active contributing member of PSERS.

Equitable Estoppel Analysis

Faced with the facts surrounding the date of her termination from active service and the date upon which she filed her Purchase of Out-of-State Service forms with PSERS, Claimant asserts that PSERS should be equitably estopped from precluding her from purchasing out-of-state service credit based upon PSERS' purported failure to properly educate her regarding the requirements of the Retirement Code. It is well settled that the statutory provisions of the Retirement Code strictly apply, even when a claimant may not have been provided adequate or correct information from PSERS. *Tyson v. Pennsylvania Public School Employees' Retirement System*, 737 A.2d 325, 328 (Pa. Cmwlth. 1999); *Finnegan v. Public School Employees' Retirement Board*, 560 A.2d 848, 852 (Pa. Cmwlth. 1989); *Cosgrove v. State Employees' Retirement Board*, 665 A.2d 870 (Pa. Cmwlth. 1995). It is equally well

established that although the doctrine of equitable estoppel is applicable to governmental agencies, there are limited situations in which estoppel cannot be invoked against the Commonwealth or its instrumentalities and subdivisions. *Kellams v. Public School Employees' Retirement Board*, 403 A.2d 1315, 1318 (Pa. 1979) (citing *Ervin v. City of Pittsburgh*, 14 A.2d 297 (Pa. 1940)). The fundamental underpinning of this rule of law is the principal that the government cannot be bound by the actions of its agents and employees if those acts are in violation of positive law such as Pennsylvania's Retirement Code. *Id.* Rather,

By operation of law, parties dealing with the government are charged with knowledge of, and are bound by, statutes and lawfully promulgated regulations, (citation omitted), and reliance upon incorrect information received from a government agent or employee can not alter the terms of a statute regardless of the economic hardship which may result.

Kellams, 403 A.2d at 1318 (citing *Brown v. Richardson*, 395 F.Supp. 185, 190 (W.D.Pa. 1975)). The Retirement Code makes the Board trustees of the Public School Employees' Retirement Fund, but the Retirement Code gives the Board no power to alter or modify the individual retirement benefits mandated by the statute. See, 24 Pa.C.S.A. §8103.

In *Finnegan*, PSERS erroneously informed a member that she could purchase fifteen years of out-of-state service credit which would have provided the member with 30 years of active service. *Finnegan*, 560 A.2d at 849. The member made an irrevocable decision to retire based upon her reliance upon that information. The Retirement Code, however, restricted such purchases to twelve years. *Id.* As a result, the member received far smaller retirement benefits than she expected. On appeal, the Commonwealth Court affirmed PSERS' determination that the member was not permitted to purchase additional service credit because doing so would be tantamount to impermissibly permitting PSERS' employees to amend the statute. *Finnegan*, 560 A.2d at 851. Although the Commonwealth Court found that all factual requisites for a showing of estoppel existed, the Court held that PSERS could not be

estopped from enforcing the statutory provisions of the Retirement Code even if it resulted in the inability of the member to purchase additional service credit. *Id.* at 851.

As to Claimant's assertion that PSERS had an affirmative duty to specifically inform her of the requirement to apply for out-of-state service credit prior to her last day of active service, Pennsylvania law imposes no such requirements. In *Trakes v. Public School Employees' Retirement System*, 768 A.2d 357 (Pa. Cmwlth. 2001) the Pennsylvania Commonwealth Court rejected a nearly identical argument advanced by claimants whose applications for disability annuity benefits were denied by PSERS. *Id.* Like Claimant in this case, the claimants in *Trakes* argued that if PSERS wished to impose a deadline on an application for a retirement benefit, it was required to specifically communicate that fact to its members rather than rely on bulk mailings or handbooks and information bulletins to inform members of such an important restriction. *Trakes*, 768 A.2d at 367.

In rejecting claimants' contention, the Commonwealth Court found that had the Pennsylvania General Assembly intended to impose a requirement for PSERS to issue separate written notices of particular time constraints for certain retirement benefits, it would have included such a provision within the Retirement Code. Because the Retirement Code contained no such provision regarding applications for disability annuity benefits in that case, the Commonwealth Court declined to insert a provision into the statute which the Legislature "did not see fit to include." *Id.* Here, as in *Trakes*, the Retirement Code did not impose a specific notice requirement upon PSERS to separately notify Claimant of the process and deadline by which to apply for the purchase of out-of-state service credit.

Notwithstanding the absence of a specific notice provision within the Retirement Code however, the record is replete with instances where PSERS provided Claimant with notice of the requirement to apply for out-of-state service credit prior to her last day of active service. Specifically, PSERS provided Claimant a Member Handbook upon beginning her employment with the District and PSERS

enrollment. The Member Handbook stated that “Any active contributing member of the [PSERS] ...may be eligible to purchase service”. PSERS also provided Claimant with an updated Active Member Handbook in June 2007. The updated Active Member Handbook similarly stated that “Active members of PSERS are eligible to apply to purchase service credit” and “Active members who qualify can purchase the following types of school and non-school service”. The updated Active Member Handbook also informed Claimant that “PSERS must receive your purchase of service applications while you are an active contributing member.”

The record shows that PSERS also provided Claimant annual Statements of Account for school years 2005 through 2011 which indicated “All requests to purchase service credit must be filed while you are a qualified contributing member.” It also provided Claimant annual Statements of Account for school years 2011 through 2014 which stated, “All requests to purchase service credit must be filed while you are a qualified contributing member and within the prescribed time frame.”

Claimant also attended a PSERS Foundations for Your Future program at the District in the Fall 2013 at which Power Point slides were discussed. The Power Point presentation at the Program stated that Claimant “Must apply while an active contributing member in a qualifying year” when addressing “Purchase of Service”. “Out-of-State public school service” was also addressed by the PSERS presenter at the Program. Moreover, the PSERS presenter explained to attendees that applications for out-of-state public school service will not be accepted after a member terminates service. Soon thereafter, Claimant’s March 14, 2014 Request for Retirement Estimate form included the language “**REMINDERS:**“Purchase of Service: If applicable, your completed application to purchase credit for service must be received by PSERS prior to your last day of paid service. Please visit the PSERS website or request the “Let’s Talk About Purchasing Credit for Service” pamphlet for more details”...

As set forth above, Pennsylvania law makes clear that any purported failure by PSERS to advise Claimant of her need to have applied for out-of-state service credit while still an active contributing member cannot negate or otherwise usurp the provisions of the Retirement Code upon which PSERS relied when it denied Claimant's request to purchase the service credit after she had terminated her school service. Upholding the decision of the PSERS Executive Staff Review Committee is even more compelling than in *Finnegan* in light of evidence that Claimant was repeatedly advised of her need to apply for the service credit before she terminated her school service on June 30, 2014. For the foregoing reasons, the following Recommendation shall be issued:

**COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM**


In Re:
Account of Ruth Elaine King
Claim of Ruth Elaine King

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Docket No. 2018-02

RECOMMENDATION

AND NOW, this 7th day of **June 2019**, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Discussion, the Hearing Officer for the Public School Employees' Retirement System recommends that Claimant's appeal from the November 6, 2017 decision of the PSERS' Executive Staff Review Committee be **DENIED**.



Marc A. Moyer, Esquire
Hearing Officer

Claimant: Ruth Elaine King



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Date of Mailing: 6/7/19